



Attorney Docket No.47777-0005

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Christian MAYAUD

Serial No. : 09/941,681

Filing Date : August 30, 2001

Title : A COMPUTERIZED PRESCRIPTION SYSTEM FOR
GATHERING AND PRESENTING INFORMATION
RELATING TO PHARMACEUTICALS

Examiner : Samuel G. Rimell

Group/Art Unit : 2175

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Technology Center 2100

Commissioner for Patents
Alexandria, VA 22313-1450

**DECLARATION OF PRIOR INVENTION IN THE UNITED STATES
OR IN A NAFTA OR WTO MEMBER COUNTRY
TO OVERCOME A CITED PATENT OR PUBLICATION
37 C.F.R. § 1.131**

1. I, Christian Mayaud, am the named inventor of the '681 Application.
2. The present '681 Application is a continuation of United States Patent Application serial number 09/121,597, filed July 24, 1998, which is a continuation of United States Patent Application serial number 08/942,372, filed October 2, 1997 (now U.S. Patent number 5,845,255), which is a continuation of U.S. Patent Application serial number 08/330,745 (the '745 Application) filed October 28, 1994 (now abandoned).
3. On a date prior to December 13, 1993, I made a confidential presentation to a third party regarding my invention then called "Physicians' Online." In support for that presentation, I

provided a handout, a copy of which is attached hereto as Exhibit A, (all dates on submitted materials have been redacted), this handout material is numbered POL 03771 through POL 03783. This handout, Exhibit A, bears a printed date thereon (redacted) at page marked POL 03771, which shows the date that the meeting took place, a date prior to December 13, 1993. In further support of the date of this said meeting, attached hereto as Exhibit B, document no. POL 05667, is a copy of two pages from my personal calendar. In my writing there is displayed on the left side a morning entry, showing my "9:30" meeting (third party name and meeting location redacted) which date, printed on my calendar (redacted), is prior to December 13, 1993. This corroborates the date on the handout and the date the meeting took place prior to December 13, 1993. Other writings on this Exhibit B sheet reflect my notes of the parties in attendance at the meeting.

4. On another date prior to December 13, 1993, I made another confidential presentation to another third party regarding said invention "Physicians' Online." In support for that presentation, I provided a handout, a copy of which is attached hereto as Exhibit C. This handout material is numbered THB12195 through THB12206. This handout, Exhibit C, bears a printed date thereon (redacted) at page marked THB 12195, which shows the date that the meeting took place, a date prior to December 13, 1993. This corroborates the date the meeting took place prior to December 13, 1993.

5. On another date prior to December 13, 1993, I made another confidential presentation to another third party regarding my said invention "Physicians' Online." In support for that presentation, I provided a handout, a copy of which is attached hereto as Exhibit D. This handout material is numbered THB 08060 through THB 08072. This handout, Exhibit D, bears a

printed date thereon (redacted) at page marked THB 08060, which shows the date that the meeting took place, a date prior to December 13, 1993. This corroborates the date the meeting took place prior to December 13, 1993.

6. On another date prior to December 13, 1993, I made a confidential presentation to a third party regarding my said invention "Physicians' Online." In support for that presentation, I provided a handout, entitled Business Summary PHASE 1 Medical Knowledge Management, which is attached hereto as Exhibit E, having document numbers POL 03290 through POL 03348. This handout, Exhibit E, bears a printed date thereon (redacted) at page marked POL 03290, which shows the date that the meeting took place, a date prior to December 13, 1993. This corroborates the date the meeting took place prior to December 13, 1993.

7. On another date prior to December 13, 1993, I made a confidential presentation to a third party regarding my said invention "Physicians' Online." In support for that presentation, I provided a handout, entitled PHASE 1 Business Plan Medical Knowledge Management, which is attached hereto as Exhibit F, having document numbers POL 02223 through POL 02301. This handout, Exhibit F, bears a printed date thereon (redacted) at page marked POL 02223, which shows the date that the meeting took place, a date prior to December 13, 1993. This corroborates the date the meeting took place prior to December 13, 1993.

8. On another date prior to December 13, 1993, I made a confidential presentation to a third party regarding my said invention "Physicians' Online." In support for that presentation, I provided a handout, entitled Physicians' Prescribing Network, which is attached hereto as Exhibit G, having document numbers THB 06006 through 06042. This handout, Exhibit G, bears a printed date thereon (redacted) at page marked THB 06006, which shows the date that

the meeting took place, a date prior to December 13, 1993. This corroborates the date the meeting took place prior to December 13, 1993.

9. On another date prior to December 13, 1993, I sent a facsimile transmission of at least a one page document entitled "Physicians' Online: 5 year Plan," regarding my said invention, which is attached hereto as Exhibit H, having document number THB 07125. This document, Exhibit H, bears a printed date thereon (redacted) at page marked THB 07125, which shows the date of the facsimile transmission, a date prior to December 13, 1993.

10. All of the handouts and presentations referenced above in paragraphs numbered 3 through 9 support that my said invention "Physicians' Online," as presently embodied in at least claim 70 of the '681 Application, was invented by me, and was conceived by me, prior to December 13, 1993.

11. On a date prior to December 13, 1993, I retained a Patent Law Firm to file a patent application for my said inventions. From a date prior to December 13, 1993 and up to October 28, 1994 I continuously and regularly met on numerous occasions with my patent attorney who drafted my patent application. During this time I met with my patent attorney approximately two days per month at his offices so as to review his progress on this sizeable disclosure and his drafts, which I reviewed and edited. As a result of continuous and diligent meetings with my patent attorney, a patent application was drafted resulting in the '745 Application, which had 172 typewritten pages in the specification and having 16 sheets of drawings. The '745 Application was filed with 69 claims which included three independent claims. In order to draft this application, considerable amount of time was necessary to meet with my patent attorney and review each claim as well as to review the entire specification and the drawings and flow charts.

The specification drafted by my patent attorney included at least 35 separate sections detailing and describing my invention, which required the numerous meetings with my patent attorney to draft. On information and belief, my personal calendar would support these visits with my patent attorney. At the present time my said calendar is not in my control. It may come into my control at a date in the future pending third party litigation.

12. At all times from a date prior to December 13, 1993 through the filing date of my '745 Application, both my patent attorney and I were diligent in preparing and filing my '745 Application for patent.

13. The power point slide show presentation produced and filed in my earlier section 131 declaration for this '681 Application was developed by me on a date prior to December 13, 1993. The actual presentation was presented to several companies under confidentiality agreements on dates prior to December 13, 1993.

14. All of the handouts and presentations referenced above in paragraphs numbered 3 through 9 illustrate that I invented the subject matter of claim 70 of the '681 Application prior to December 13, 1993. In particular, I note the following:

- a prescription creation screen having prescriber-operable data capture devices is illustrated on document nos. THB 06017 and 06036; and POL 02237, 02242, 02247, 02271, 02273, 03779, 03780, 03781, 03545, and 03548 of the enclosed materials;
- a patient identifier data capture device for capturing patient-identifying data is illustrated on document nos. THB 06010, 06012, 06015, 06017, and 06036; and POL 02243, 02247, 02271, 03545, and 03548 of the enclosed materials;

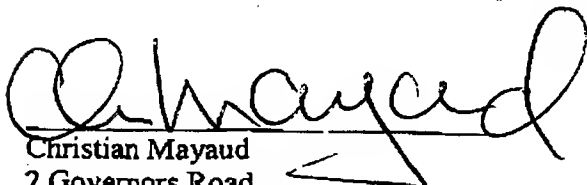
- a prescribed drug data capture device for capturing prescribed drug identification data is illustrated on document nos. THB 06010, 06011, and 06012; and POL 02246, 02247, 02248, 02261, 02271, 02273, 03779, 03780, 03781, 03545, and 03548 of the enclosed materials;
- at least one drug quantifier capture device for capturing drug quantification data is illustrated on document nos. THB 06036 and POL 02247, 02248, and 02271 of the enclosed materials;
- a patient condition data capture device to capture patient condition data regarding said patient condition exhibited by said patient whereby said electronic prescription further comprises said patient condition data is illustrated on document nos. THB 06010 and 06017; and POL 02243 and 02271 of the enclosed materials;
- a library of prescribable drug data accessible by one or more of said data capture devices from said prescription management screen to display multiple prescribable drugs is illustrated on document nos. THB 06010, 06011, and 06012; and POL 02236, 02246, 02248, 02261, 02273, 03545, 03548, and 03549 of the enclosed materials;
- a prescription output screen device to output a completed prescription is illustrated on document nos. THB 06012 and 06036; and POL 02246 of the enclosed materials.

15. I actually utilized the subject matter of claim 70 to write and generate an electronic prescription for viewing on a prescription creation screen and printed it out prior to

December 13, 1993. The prescription was printed on a printer and included the patient condition and identification and quantification data regarding a drug prescribed by me for treatment of the patient condition, the patient condition and drug data being captured into the prescription by the data capture devices. To the best of my knowledge a copy of this prescription would still be in memory of my original computer, which at the time of making this declaration, said computer is in storage in a location not in my present control.

DECLARATION

I, Christian Mayaud, hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.


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Date: 6/4/04